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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. [redacted] 23

STATE BANK OF HARDINSBURG,
Petitioner,

vs.

CHANCEY RAY BROWN AND MARY G. BROWN,
Respondents.

PETITIONER'S BRIEF.

TELFORD B. ORBISON,
New Albany, Indiana,
Counsel for Petitioner.

THE GUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

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No. 920.

STATE BANK OF HARDINSBURG,
Petitioner,

vs.

CHANCEY RAY BROWN and MARY G. BROWN,
Respondents.

PETITIONER'S BRIEF.

Opinions Below.

The District Court did not deliver an opinion, but only made Special Findings of Fact, and Conclusions of Law (R. 55-59).

The opinion of the Circuit Court of Appeals (R. 86-93), is reported in 124 F. (2d) 701.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered November 8, 1941 (R. 94). The petition for writ of certiorari was filed February 4, 1942, and granted March 30, 1942.

The jurisdiction of this Court is invoked under § 75(n) of the Bankruptcy Act (49 Stat. 942, c. 792; 11 U. S. C. A.

§ 203); Section 24(c) of the Bankruptcy Act (52 Stat. 854; 11 U. S. C. A. Sec. 47); and Section 240 of the Judicial Code, as amended (48 Stat. 926; 28 U. S. C. A. Sec. 347). A detailed statement of jurisdiction will be found in the Petition for Writ of Certiorari at pages 5 and 6.

Statement of the Case.

February 19, 1938, respondents executed and delivered to petitioner, their promissory note in ~~the~~ amount of $2,500, and to secure payment thereof gave a mortgage on 125 acres of farm land in Orange County, Indiana (R. 55).

March 4, 1939, petitioner instituted foreclosure proceedings in the Circuit Court of Orange County, Indiana, against respondents to foreclose its mortgage (R. 57).

November 20, 1939, petitioner obtained a judgment of foreclosure and a decree was entered on that date foreclosing the mortgage and ordering the 125 acres to be sold to pay and satisfy the judgment (R. 57).

May 25, 1940, the sheriff of Orange County, Indiana, duly sold the 125 acres to petitioner (R. 57). Respondents did not redeem at any time prior to the sheriff's sale or at any other time (P 57).

May 28, 1940, respondents filed their petition under Section 75 of the Bankruptcy Act with the Clerk of the United States District Court, for the Southern District of Indiana, New Albany Division, and accompanied the same with schedules in which they listed, among other property, the 125 acres (R. 57).

June 1, 1940, the Sheriff of Orange County executed and delivered a deed to the 125 acres to petitioner (R. 57).

June 30, 1940, petitioner filed its motion to strike the 125 acres from the schedules for the reason that at the time the petition was filed, on May 28, 1940, respondents

had no right or equity in the property, in view of the fact that the period of redemption had expired with the Sheriff's sale (R. 57).

November 20, 1940, the District Court, after hearing the motion to strike, filed its special findings of fact and conclusions of law, and on the same date entered judgment wherein it was ordered that the motion to strike the 125 acres from the schedules, be sustained, and it was further ordered that the said 125 acres be stricken from the schedules and that the bankruptcy proceeding should be dismissed, in so far as it pertained to the said 125 acres, and the Conciliation Commissioner was ordered and directed to make his report without taking any action upon and expressly excepting therefrom said 125 acres (R. 59-61).

November 8, 1941, the Circuit Court of Appeals for the Seventh Circuit, by a divided court, reversed the order of the District Court, holding that although under the Indiana law, the right of redemption was cut off by the sheriff's sale, nevertheless the bankruptcy court could acquire jurisdiction under sub-section (n) of Section 75, because the sheriff's deed had not been delivered at the time respondents filed their petition (R. 86). Judge Major in a dissenting opinion, held that inasmuch as the right of redemption had been cut off by the sheriff's sale, the bankruptcy court could not acquire jurisdiction over the property under said sub-section (n) because respondents had no right or equity in the property at the time the petition was filed, and that to hold otherwise would render it unconstitutional (R. 90).

Section 3-1801, Burns Indiana Statutes, 1933, provides that in any proceeding for the foreclosure of any mortgage on real estate, no process shall issue for the execution of any such judgment or decree of sale, for the period of one year, after the filing of the complaint in any such proceeding (R. 88; App. 29).

Section 3-1803, Burns Indiana Statutes, 1933, provides that the owner of mortgaged property which has been foreclosed may redeem at any time prior to the sheriff's sale (R. 88; App. 30).

Section 3-1806, Burns Indiana Statutes, 1933, provides that immediately after the foreclosure sale the sheriff shall execute and deliver to the purchaser a deed of conveyance for the premises, which shall be valid and effectual to convey all the right, title and interest held or claimed by all of the parties to the action, and all other persons claiming under them (App. 31).

Section 3-1808, Burns Indiana Statutes, 1933, provides that there shall be no redemption from foreclosure of mortgages except as provided above (R. 91; App. 33).

Questions Presented.

I. Did the Circuit Court of Appeals for the Seventh Circuit err in holding that the fact that a sheriff's deed is not executed and delivered until after a farmer-debtor files his petition under Section 75 of the Bankruptcy Act, is sufficient to give a court of bankruptcy jurisdiction under sub-section (n) of said Section 75 over real property, where, prior to the filing of the petition, such property has been sold by the sheriff pursuant to a judgment of foreclosure, and, under the applicable state law, there exists no right of redemption or any other right or equity in the property after such sale?

II. Did the Court of Appeals err in holding that Section 75 (n), as thus construed, (a) was within the bankruptcy power of Congress, as granted by Article 1, section 8, clause 4 of the Constitution, (b) did not violate the due process clause of the Fifth Amendment, and (c) was not an invasion of the powers reserved to the states by the Tenth Amendment?

SUMMARY OF ARGUMENT.

Point I.

Section 75 (n) of the Bankruptcy Act Did Not Give the Bankruptcy Court Jurisdiction of the Property in Question, Inasmuch as Respondents' Right of Redemption Had Expired at the Time They Filed Their Petition for Relief With the Result They Had No Right or Equity or Interest of Any Nature Under the Law of Indiana in Such Property.

A. The provisions of Section 75 (n) require that the farmer-debtor at the time of the filing of his petition for relief must be possessed of some equity or right, as determined by the applicable state law, in the property he seeks to subject to the jurisdiction of the bankruptcy court.

P In amending Section 75 (n) Congress merely intended to clarify the original provisions of the sub-section, so as to make certain the farmer-debtor and his property would come within the jurisdiction of the bankruptcy court "after foreclosure, and during the period of redemption" and did not intend to give the farmer any new property right or to subject real property to the jurisdiction of the bankruptcy court after the period of redemption had terminated.

C. Whether respondents had any right or equity in the property in question so as to bring it within the provisions of Section 75 (n) must be determined by the law of Indiana.

D. Under the Indiana law the right of redemption was cut off by the sheriff's sale, and inasmuch as respondents did not file their petition for relief under Section 75(n) until after such sale, they had no right or equity in the property and, as a consequence the bankruptcy court could not obtain jurisdiction over it.

E. The fact that the sheriff's deed was not delivered to petitioner as purchaser, until after the petition was filed did not operate to give the Bankruptcy Court jurisdiction of the property under the provisions of Section 75(n).

Point II.

The Construction Placed on Section 75 (n) by the Circuit Court of Appeals Renders It Unconstitutional Because Not Within the Bankruptcy Power of Congress as Provided in Article 1, Section 8, Clause 4, and Also Because Violative of the Fifth and Tenth Amendments.

A. Although Article 1, Section 8, clause 4 gives broad power to Congress in the matter of bankruptcy legislation, yet it did not give Congress the power to create property rights or revive or recreate an interest or right which has ceased to exist prior to the time a debtor comes into the bankruptcy court.

B. The due process clause of the Fifth Amendment does not permit a man's property, the title to which has been lawfully acquired by the state law, to be taken from him, and given to another without just compensation.

C. There is an invasion of the powers reserved to the state, by the Tenth Amendment, and a violation of the property right of petitioner, theretofore determined by the law of Indiana.

ARGUMENT.

Point I.

Section 75 (n) of the Bankruptcy Act Did Not Give the Bankruptcy Court Jurisdiction of the Property in Question, Inasmuch as Respondents' Right of Redemption Had Expired at the Time They Filed Their Petition for Relief With the Result They Had No Right or Equity or Interest of Any Nature Under the Law of Indiana in Such Property.

Section 75 (n) of the Bankruptcy Act of 1898, as amended, the construction of which is involved in this case, reads as follows:

"The filing of a petition or answer with the Clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under section 75 of this Act, as amended (this section), shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or

the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section."

(Act of August 28, 1935; 49 Stat. 942, c. 792; 11 U. S. C. A. Sec. 203.)

It appears to be obvious that under the provisions of this sub-section the farmer-debtor must have some right or equity in the property at the time of the filing of his petition. To hold otherwise would be to completely destroy property rights as established by state law, and further would be contrary to principle and precedent. Nevertheless, the Court of Appeals did hold that although under the Indiana law respondents' right of redemption had been cut off by the sheriff's sale, yet the bankruptcy court did acquire jurisdiction because the sheriff's deed had not been delivered at the time of the filing of the petition. It apparently takes the position that the provisions of subsection (n) have the force and effect of creating a right or equity in the property in favor of respondents because of the non-delivery of the deed.

The bankruptcy court could only acquire jurisdiction of a property right existent at the time the petition was filed. If, at that time, the period of redemption had expired and respondents could no longer exercise any right or interest in the property, by way of redemption or otherwise, there was nothing of which the court could or would acquire jurisdiction. The delivery of the deed was only incidental—the right to the same could not be defeated by the respondents, by redemption, or otherwise, when and after the petitioner, as foreclosure purchaser, had become entitled to it. The absence of a deed could not hold alive, or recreate a property right which had ceased to exist.

The sub-section includes a number of contingencies under which the bankruptcy court can acquire jurisdiction, and obviously was designed to meet the various events perti-

nent under the different provisions of the several states in connection with foreclosure, and that only was or could have been the purpose of the expression of the several and differing conditions whereby the debtor could or would lose his interests in the property foreclosed. The provisions of the said sub-section clearly indicate that the farmer-debtor must have some equity or right in the property at the time he files his petition, in order for the bankruptcy court to acquire jurisdiction. Judge Major, in his dissenting opinion, very clearly demonstrates that this is the proper construction, as shown by the following language:

> "It is difficult for me to comprehend the reasoning employed in the construction placed upon Section 75 (n). Perhaps that is the reason I am unable to agree. The phrase 'or where deed has not been delivered' is held to 'authorize extension of the period of redemption.' This in my opinion, is a fallacious interpretation, inconsistent with the purport of the paragraph when read in its entirety. It is provided that the filing of a petition '* * * shall immediately subject the farmer and all his property, * * * to the exclusive jurisdiction of the court, * * * or any equity or right in any such property, * * *.' I think it is readily apparent that all the enumerated circumstances which follow are dependent upon the premise that the debtor, upon filing his petition, be possessed of an 'equity or right' in the property. If no such right or equity exists, none of the contingencies, including the one here relied upon, can be effective. For instance, among the contingencies enumerated are—'* * * contracts for purchase, contracts for deed, or conditional sales contracts, * * *.' Under the majority construction it would follow that a debtor who, at the time of the filing of his petition, possessed one of these instruments, would bring into the jurisdiction of the Bankruptcy Court, any land described therein, and this irrespective of the fact that any equity or interest in such land had long before expired. In the same category is the phrase 'where deed had not been delivered'. There may be situations where the debtor

has an 'equity or right' until the delivery of a deed. There must be other cases—in fact, this is one—where the extinguishment of his 'equity or right' was not dependent upon such delivery."

If it can be said that the language of Section 75 (n) is not altogether free from doubt, then it is submitted that an examination of the legislative history of the sub-section, and the cases construing Section 75 removes any such doubt. Such examination clearly shows that it was not the Congressional intent for this sub-section to be construed as was done by the Seventh Circuit.

Originally sub-section (n) merely provided "the filing of a petition praying for relief under this Section, shall subject the farmer and his property, wherever located, to the exclusive jurisdiction of the court." (March 3, 1933, 47 Stat. at L. 1470 Chap. 204, Sec. 75, 11 U. S. C. A. S. C. C. 203.) The decisions of the various District and Circuit Courts of Appeal were conflicting as to what was to be deemed included under the term "property", especially with reference to state foreclosure laws and the termination thereunder of all the mortgagor's right, title and interest. Some courts held an equity or right of redemption was not "property" within the meaning of sub-section (n),[1] while others held to the contrary.[2] (See Annotation 99 A. L. R. pages 1390-1393, for discussion of conflicting decisions under old sub-section (n).)

The situation was further complicated because of the fact that a deed of trust is used in many states as a method

1. *Re Rugelt* (1935; D. C.) 10 F. Supp. 113, 27 Am. Bankr. Rep. (N. S.) 538; *Re Chaboya* (1934; D. C.) 9 F. Supp. 174; 27 Am. Bankr. Rep. (N. S.) 147; *Re Smith* (1934; D. C.) 9 F. Supp. 277, 27 Am. Bankr. Rep. (N. S.) 67, affirmed in (1935; C. C. A. 8th), 78 F. (2d) 533, 29 Am. Bankr. Rep. (N. S.) 9; *Re Hageman* (1935; D. C.), 10 F. Supp. 716, 29 Am. Bankr. Rep. (N. S.) 68.

2. *Bradford v. Fahey* (1935; C. C. A. 4th), 76 Fed. (2d) 628, reversed on rehearing in (1935; C. C. A. 4th), 77 Fed. (2d) 992; *Re Duffy* (1934; D. C.) 9 F. Supp. 166, 27 Am. Bankr. Rep. (N. S.) 398; *Re Cope* (1934; D. C.) 8 F. Supp. 778, 961, 26 Am. Bankr. Rep. (N. S.) 549, 269; *Re Randall* (1936; D. C.) 20 F. Supp. 470.

of security,[3] and also in the fact that in some states the equity of redemption does not expire until the deed has been delivered,[4] while in others it expires with the foreclosure sale,[5] and in still others it does not expire until the sale has been confirmed by the court.[6]

It is to be noted, however, that while the cases were in conflict as to whether an equity or right of redemption was such a property right as to give a court of bankruptcy jurisdiction under Section 75, yet there was unanimity in the decisions to the effect that if in fact the equity or right of redemption had expired then the bankruptcy court had no jurisdiction, and that whether the equity or right of redemption had or had no expired must be determined by the law of the particular state in which the property in question was located. (See 99 A. L. R. pages 1389 to 1395.)

At the time Congress revised sub-section (s) in order to bring it within the limitations laid down by this court in *Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555, 79 L. ed. 1593, 55 S. Ct. 854, 97 A. L. R. 1106 (holding the Frazier-Lemke Act unconstitutional), it also amended sub-

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3. Among the states in which the deed of trust is in common use, are Arizona, California, Colorado, Idaho, Illinois, Iowa, Kansas, Montana, North Carolina, Oklahoma, South Carolina, Tennessee and Texas, mortgages being practically unknown in the latter two states. Volume II Martindale-Hubbell Law Directory; 36 Am. Jur. Section 16-31.

4. This would generally be true in the case of a deed of trust with power of sale. For instance, in Nevada and Oklahoma it is provided by statute that no equity or right of redemption exists after a sale made under the power of sale contained in a trust deed. Nev. Compiled Laws of 1929, Sections 7710-7716; Okla. Statutes, 1931, Section 11814.

5. In Indiana the mortgagor has the right to redeem up to the time of the foreclosure sale by the sheriff. Burns Indiana Statutes, 1933, Sec. 3-1803. This is also true of Pennsylvania. *Shreiner* v. *Farmers Trust Co.* (C. C. A. 3) 91 F. (2d) 606, cert. den. 302 U. S. 686; *Re Randall* (D. C., W. D. Pa. 1930) 20 F. Supp. 470.

6. In Ohio the sale is not complete until confirmation by the court. (*Bassett* v. *Daniels*, 10 Ohio St., 617, 619; *Reed* v. *Radigan*, 42 Ohio St., 292, 294.) And the mortgagor may redeem at any time prior to confirmation. Throckmorton's 1940 Annotated Code of Ohio, 11690. In Nebraska the right of redemption exists until the sale is confirmed by the court. Compiled Statutes 1929, 20-1530. In Wisconsin (Wisc. Statutes, 1941 C. 278, Minn. (Mason's Minn. Statutes 1927, Sec. 9641) and N. J. (Revised Statutes N. J. 1937, Tit. 2, c. 65, Sec. 12) the sale need not be confirmed by the court.

section (n) by adding the provisions relating to contracts for purchase, contracts for deed, conditional sales contracts, the right or equity of redemption where the period of redemption has not or had not expired, etc.

The committee reports in connection with that legislation (Act of Congress approved Aug. 28, 1935, Public No. 384, 74th Congress) indicate that the reason for the amendment was to make clear it was the intent of Congress that the benefits of the Section should be available to a farmer "during the period of redemption". Statements to this effect are found on page 2 of the Report of the House Committee on the Judiciary (H. R. Report No. 1808, 74th Congress, First Session) and pages 4 and 2 of the Report of the Senate Committee on the Judiciary (Senate Report No. 985, 74th Congress, First Session).

That Congress did not intend to create a new property right, as the Seventh Circuit Court does by its decision, is amply shown by the statements made in debate on the bill (Congressional Record, Volume 79, Part 15, page 15632, August 19, 1935) which are as follows:

> "Farm-Mortgage Relief.
>
> "The Senate resumed the consideration of the bill (S. 3002) to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and amendatory thereof and supplementary thereto.
>
> "The Vice President. The clerk will state the first amendment reported by the Committee on the Judiciary.
>
> "The first amendment was, in section 4, page 3, line 15, after the word 'expired', to insert 'or where a deed of trust has been given as security', so as to read:
>
> "(n) The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under Section 75 of this act, as amended, shall immediately subject the

farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not had or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

"Mr. Borah. Mr. President, the measure is here by reason of the decision of the Supreme Court on what is known as the Frazier-Lemke bankruptcy measure which was passed at the last session.

"The Supreme Court held a portion of that act, subsection (s), unconstitutional. The purpose of the bill is to avoid the objectionable feature of the former act as they were denounced by the Supreme Court.

"In the first place, however, it ought to be said that we undertook to make some amendments in section 75 before we got to subsection (s). These amendments are for the purpose of clarifying section 75. Some of the courts have held that the farmer debtor could not take advantage of the act *after foreclosure sale and during the period of redemption. The bill undertakes to clarify it so as to permit the farmer to take advantage of section 5 after foreclosure and during the period of redemption.*

"Some of the courts also refused to permit the farmer who was in that position to file his petition, although under the law of the State he was in possession and full control of the property and could redeem it during the period of moratorium established by the States. One of the amendments to section 5 takes care of that objection which was raised by the court.

"Amended subsection (s) construes, interprets, and clarifies both subsections (n) and (o) of section 5. By reading subsections (n) and (o) as now enacted, *it becomes clear that it was the intention of Congress, when it passed section 75, that the debtor and all of his property should come under the jurisdiction of the*

court of bankruptcy, and that the benefits of the act should extend to the farmer prior to confirmation of sale and during the period of redemption. In other words, the amendments provide that the farmer may avail himself of the act after foreclosure and during the period of redemption, and may also avail himself of the act during the period of the moratorium provided for him within the State.

"It also provides that when the action is taken under section 75 all of the property of the farmer shall be included in the schedules and appraised.

"These amendments are for the purpose of clarification of section 75. Now we come to subsection (s). * * *." (Italics and emphasis ours.)

It is apparent from the remarks made in the Senate, the Congressional intent was to clarify sub-section (n).

"* * * so as to permit the farmer to take advantage of Section 75 *after foreclosure and during the period of redemption.*" (Emphasis ours.)

The Congressional intent went no further. It was not the intention of Congress to give the farmer any new property right. After the period of redemption had terminated, Congress did not intend that the farmer could still subject real property to the jurisdiction of the bankruptcy court.

There can be no question but that the sheriff's sale which was held prior to the filing of the petition for relief cut off respondents' right of redemption. Section 3-1801, Burns Indiana Statutes, 1933, provides that no process shall issue for the execution of any judgment of foreclosure or decree of sale, for the period of one year after the filing of the complaint. In this case, the complaint was filed on March 4, 1939, and process for execution of the judgment which was rendered on November 20, 1939 was not issued until more than one year after the filing of the complaint (R. 57). Section 3-1803 provides that at any time prior to the sheriff's sale any owner may redeem the property from the judgment, by payment of the amount of the judgment

interest and costs. Section 3-1808 provides that there shall be no redemption from foreclosure of mortgages, except as above stated.

The sheriff's sale was held on May 25, 1940, and respondents did not file their petition for relief under Section 75 until May 28, 1940. Although the sheriff's sale was held prior to the time respondents filed their petition, yet the sheriff's deed was not executed and delivered to petitioner until June 1, 1940, which was three days after the petition was filed and it is this fact, and ~~this fact~~ alone, which the Court of Appeals says is sufficient to give the bankruptcy court jurisdiction of the 125 acres in question, under and pursuant to the provisions of sub-section (n), notwithstanding under the law of Indiana, the period of redemption had expired at the time the petition was filed, and further, notwithstanding that under such law, respondents then had no right or equity of any kind in the property.

Section 3-1806, Burns Indiana Statutes, 1933, provides:

> "Immediately after such sale the sheriff shall execute and deliver to the purchaser a deed of conveyance for the premises which shall be valid and effectual to convey all the right, title and interest held or claimed by all of the parties to said action, and all persons claiming under them and thereupon make due return to the clerk of the court."

This section mandates the sheriff to execute and deliver to the purchaser a deed immediately after the foreclosure sale. The effect of the holding of the Court of Appeals is to condition the jurisdiction of the bankruptcy court on whether the sheriff performs his statutory, mandatory duty, which, to our way of thinking, is a novel development in the judicial process.

The fact that the sheriff's deed was not executed and delivered until after the petition was filed was merely incidental and quite unimportant, notwithstanding the majority opinion of the Court of Appeals to the contrary. Re-

spondents had no power to prohibit or interfere with its becoming effective, and hence had no right or equity in this respect. On the other hand, petitioner had the right to mandate the sheriff to perform his duty. *Jessup, et al.* v. *Carey*, 61 Ind. 584; *Hubble* v. *Berry*, 180 Ind. 513, 103 N. E. 328; *State ex rel. Miller* v. *Bender*, 102 Ind. App. 185, 1 N. E. (2d) 662, 663; *Glenn* v. *Hollums*, (C. C. A. 5th) 80 Fed. (2d) 55.

At the time respondents filed their petition the land was no longer their property. They could not convey or mortgage it and their right of possession had ceased to exist. In short, they had no interest of any kind in the property, because all the rights and incidents of ownership had passed from them to petitioner, and, as a result, they stood in the same position as a stranger. Nothing remained to be done to complete the superior title which passed by the sheriff's sale, except the purely ministerial act of delivering the sheriff's deed to which petitioner was unconditionally entitled. No confirmation of the sale by the court was necessary, and mere delivery of the deed would unite the legal with the equitable and superior title already vested in the petitioner.

As stated by the Fifth Circuit in *Glenn* v. *Hollums*, 80 Fed. (2d) 555, in a case where the facts and state law were very similar to those in the instant case:

> "By virtue of the sheriff's sales, appellant, concededly acquired an 'equitable and superior' title to the lands prior to the filing of the petitions in bankruptcy. That title was in no sense inchoate. It had vested. It created in the purchaser a property right which can be divested only by due process. It was a title which would support an action for recovery of the land. Appellant's former lien was extinguished, as was also the debt it secured, to the extent of appellant's bids at the sale. The land was no longer the property of the debtors. To the extent of his bid at the sheriff's sale, appellant was no longer a creditor

of, and had no provable claim in bankruptcy against the debtors. Nothing remains to be done to complete the superior title which passed by the sheriff's sales, except the purely ministerial act of delivering the sheriff's deed, to which appellant was and is unconditionally entitled, and the sheriff ready to perform, without the institution or maintenance of any further 'proceedings'. No confirmation of the sale by the court was necessary. Mere delivery of the deed would unite the legal with the equitable and superior title already vested in appellant. As to the bare legal title remaining in the debtors, they are mere trustees for the purchaser. They have no enforceable interest in the lands by virtue of that title.

"Section 75 of the Bankruptcy Act (11 U. S. C. A. Sec. 203) does not purport to alter or enlarge property rights created by the laws of the states. Courts of bankruptcy must administer the debtor's property as they find it. They cannot undo what has already been lawfully done by a court of competent jurisdiction."

In *First National Bank* v. *Staake*, 202 U. S. 141, 50 L. ed. 967, 26 S. Ct. 580, this court held that the words "property of the bankrupt" mean only the property to which the bankrupt is beneficially entitled, and do not include property to which he has only a bare legal title. While this case was decided long prior to the enactment of Section 75, yet it is persuasive in determining the extent of the jurisdiction of a bankruptcy court under Section 75 (n).

In *Shreiner* v. *Farmers' Trust Co.* (C. C. A. 3rd) 91 F. (2d) 606, certiorari denied 302 U. S. 686, the mortgagee on July 17, 1934 caused to be issued a writ of *fieri facias* to sell the real estate. On August 9, 1934, before the sheriff's sale, the debtor filed his petition under Section 75 (a—r). On July 22, 1935, after the first Frazier-Lemke Act had been declared unconstitutional, all proceedings were dismissed. On August 16, 1935 the farm in question was sold by the sheriff. On August 29, 1935 after the second Frazier-Lemke Act had been approved, a petition was

granted for a reinstatement of the proceedings. The extent of the court's opinion insofar as it relates to the case at bar is as follows:

> "In the matter of Randall, Bankrupt (decided May 25, 1936) Judge Schoonmaker held that the title to all the debtor's property passed out of the debtor at the time of the sheriff's sale, even before the acknowledgement of the deed, and was complete in the purchaser, and that thereafter the debtor had no equity of redemption in the property. Consequently after the sheriff's sale the Bankruptcy Court had no jurisdiction over the 'mortgaged premises'."

The case to which the court in the above opinion referred was that of *In re Randall* (D. C. W. D. Pa. 1936) 20 F. Supp. 470. Here the facts were, that there had been a foreclosure sale of the property prior to the debtors filing their petition, but there had been no delivery of the sheriff's deed. And among other things, the court said:

> "We hold that the title of the debtor under Pennsylvania law passed out of the debtor at the time of the sheriff's sale and was complete in the purchaser when he paid the purchase money on August 8, 1935; and that the debtor had no right of redemption in this property."

In *Buttars* v. *Utah Mtg. etc. Co.* (C. C. A. 10th) 116 Fed. (2d) 622, the debtor filed his petition on July 13, 1939, when all but sixteen days of redemption period had expired. The court entered an order giving the debtor sixty days from August 26, 1939, in which to redeem. On November 27, 1939, the debtor being unsuccessful in obtaining a composition under the act filed an amended petition under 75 (s). Also, on November 27, 1939 the sheriff delivered the deed to the purchaser at the foreclosure sale. The opinion does not state which occurred first, during the day, but the fact that the court made no specific point of the exact time when the sheriff's deed was delivered and from other language in the opinion it would seem that the delivery of

the sheriff's deed was not of any particular significance. The court said:

> "The automatic stay provided in sub-section (n) therefore terminated on October 13, 1939 and the period of redemption of the remaining sixteen days again began to run. The amended petition to come in under sub-section (s) was not filed until November 27, 1939. In the interval the remaining period of redemption had expired, and he had no remaining interest in this property when he filed his amended petition. The property was properly stricken from the bankruptcy proceedings."

So far as we have been able to ascertain there have been no decisions by either the Supreme or Appellate Courts of Indiana, construing Sction 3-1801 to Section 3-1809 of Burns Indiana Statutes, 1933, insofar as the present question is involved, although these sections, which govern all mortgage foreclosures where the mortgages were executed prior to June 30, 1931, were passed by the Legislature in 1931.

However, the position of the highest court of Indiana on the question of what effect the non-delivery of a sheriff's deed has, where the period of redemption has expired, is clearly indicated by the case of *Hubble* v. *Berry*, 180 Ind. 513-519, 103 N. E. 328. Although this case involves the general statutes in force at that time, relating to executions, sales and redemptions, yet the same principles are involved. One Allen and one Newlin obtained a judgment in a suit on a material men's lien against Berry and thereupon a decree on the judgment was issued to the sheriff commanding him to sell the real estate to satisfy the judgment. This was done and the sheriff issued a certificate of purchase to the purchaser, which was duly recorded in the *lis pendens* record, and then assigned to Hubble. The sheriff sold the property pursuant to the provisions of Section 809, Burns Indiana Statutes, 1908 (Section 766—R. S. 1881) which provided that when any real estate or interest therein shall be sold by the sheriff on execution he shall issue to the

purchaser a certificate of purchase. Section 810, Burns' Indiana Statutes, 1908 (Section 767—R. S. 1881), provided that the owner of the real estate thus sold, shall be entitled to the possession of the same for one year after the date of such sale, and Section 811, Burns' Indiana Statutes, 1908 (768—R. S. 1881), provided that the property could be redeemed at any time within one year from the date of such sale. Berry, the owner of the property and against whom the judgment was obtained, did not redeem within the year, and thereafter Hubble presented the certificate of purchase to the sheriff and demanded and obtaind a deed from him, under the provisions of Section 806, Burns' Indiana Statutes, 1908, but this was not done, however, until ten years after the judgment was rendered. Berry contended that the holder of the sheriff's certificate had not, prior to the execution of a deed, anything more than a lien on the real estate and that this lien takes its character from the judgment lien, and was therefore governed by the same period of limitations as the judgment out of which it arose. Hubble contended that the statute prescribed no limitations on the life of a sheriff's certificate of purchase and that mere lapse of time, though greater than the term of existence of a judgment lien, could not impair his right to a sheriff's deed, and that, when so executed, the same related back to the date of the judgment[7]

The Supreme Court in deciding the issue involved in favor of Hubble said:

> "A sheriff's certificate, however, after the expiration of the year for redemption, invests the holder with an equitable estate in the land, of such high character that it only requires his demand for a deed, to ripen it into an absolute legal title."[8]

In *State ex rel. Miller* v. *Bender*, 102 Ind. App. 185, 1 N. E. (2d) 662, the court in holding that the purchaser of

7. In footnote 2 on page 3 of our petition for Writ of Certiorari, we incorrectly stated that *Hubble* v. *Berry* involved the old Indiana mortgage foreclosure law.

8. This same language was quoted by this court in footnote 6 in *Wright* v. *Union Central Life Ins. Co.*, 304 U. S. 502 at page 509.

property at a mechanic's lien foreclosure sale, was entitled to mandamus requiring the sheriff to execute a deed after the expiration of the redemption period, and upon presentation of the certificate, and the sheriff's refusal to execute the deed, notwithstanding the property of the judgment debtor had been misdescribed throughout the proceeding, among other things said:

> "It is the duty of the sheriff, after the year of redemption, if the property had not been redeemed as provided by statute, to execute to the certificate holder, upon demand, a sheriff's deed to the property described in the certificate. Section 619, Baldwin's 1934, Section 2-4101, Burns' 1933, Acts 1881 (Sp. Sess.) c. 38, §546, p. 240.
>
> "The Supreme Court in the case of *Jessup et al.* v. *Carey* (1878), 61 Ind. 584, said:
>
> " 'It is clear, we think, that, if the appellee was the holder of the certificate of purchase described in his verified complaint, and if at the expiration of one year from the date of the sale mentioned in said certificate, the property sold had not been previously redeemed, as provided for in the first section of said act, then it was the duty of the appellant Jessup, resulting from his office of sheriff, to execute to the appellee a deed of conveyance of said property; and if, in such case, upon the appellee's reasonable request, the appellant Jessup, as such sheriff, failed or refused to execute such deed, he could be compelled by a writ of mandate, to perform his official duty in the premises.
>
> " 'It is evident from the averments of his complaint, that the appellee was the holder of said certificate of purchase, and that, at the expiration of one year from the date of the sale therein mentioned, he had requested the appellant Jessup, as such sheriff, to execute to him a deed of the property described in said certificate.' "[9]

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9. The statute involved in this case provided that whenever any real estate should be sold by the sheriff on execution that he should issue a certificate of purchase at the time of the sale, and that at the expiration of one year from the date of the sale, unless the property should have been previously redeemed the purchaser would be entitled to a conveyance of the real estate. Sec. 2-3909 Burns' 1933, Acts 1881 (Sp. Sess. 1881) Section 1 page 593. It will thus be noted, that the same principles are involved as in the instant case.

Up to the time the Court of Appeals rendered its decision in this case it was firmly established that the debtor must have some right or equity in the property he sought to bring within the jurisdiction of the bankruptcy court,[10] and as this Court, in the case of *Wright* v. *Union Central Life Insurance Company*, 304 U. S. 502, 83 L. Ed. 149, 58 S. Ct. 1025, stated:

> "Nothing in Section 75 as it now stands, indicates any intention that the bankruptcy courts assume control over land not previously within the jurisdiction of the bankruptcy court, and already completely divorced from any title of the debtor."

Furthermore, it has long been recognized that whether a person, who is seeking relief under the Bankruptcy Act, has any right or equity in such property must be determined by the law of the state in which the property is located. *Olmstead* v. *Olmstead*, 216 U. S. 386, 393, 394, 54 L. Ed. 530, 533, 30 S. Ct. 292; *Board of Trade* v. *Johnson*, 264 U. S. 1, 68 L. Ed. 533, 44 S. Ct. 232; *Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555, 587, 79 L. Ed. 1593, 1603, 55 S. Ct. 854, 97. A. L. A. 1106.

Apparently, the precise question involved in the case at bar, was before this Court in the very recent case of *Wright* v. *Logan* (Feb. 2, 1942), ... U. S. .....; 86 L. Ed. 443. However, Mr. Justice Black in writing the opinion of the Court expressly stated, that it was being assumed that the right of redemption existed at the time the petition for relief was filed. Nevertheless, the following language used by him may be said to be indicative, by way of implication,

10. *First Nat'l Bank* v. *Staake*, 202 U. S. 141, 50 L. ed. 967, 26 S. Ct. 580; *Board of Trade* v. *Johnson*, 264 U. S. 1, 68 L. ed. 533, 44 S. Ct. 232; *Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555, 79 L. ed. 1593, 55 S. Ct. 854, 97 A. L. R. 1106; *Union Land Bank* v. *Byerly*, 310 U. S. 1, 60 S. Ct. 733, 84 L. ed. 1041; *Shreiner* v. *Farmers' Trust Co.* (3rd C. C. A.) 91 F. (2d) 606, 607, cert. den. 302 U. S. 686; *Compton* v. *Birnie Trust Co.* (4th C. C. A.) 76 F. (2d) 639, 27 Am. B. R. (N. S.) 671; *Glenn* v. *Hollums* (5th C. C. A.) 80 F. (2d) 55; *Hoyd* v. *Citizens Bank of Albany Co.* (6th C. C. A.) 89 F. (2d) 105, 107, 108; *Bastian* v. *Erickson* (10th C. C. A.) 114 F. (2d) 338; *Buttars* v. *Utah Mtg. etc. Co.* (10th C. C. A.) 116 F. (2d) 622, 624; *Re Renardanz* (C. C. A. 7th) 91 F. (2d) 410.

of this Court's position as to the necessity of a farmer-debtor having some right or equity in the property, at the time he files his petition, in order to bring such property within the jurisdiction of the bankruptcy court:

> "It is nevertheless appropriate to point out at this time that whatever right of redemption the petitioners had when they first applied for adjudication under 75 continued to be a part of their assets, subject to administration by the bankruptcy court. For 75 (n) subjects all the farmer-debtor's assets, specifically including rights of redemption, to the jurisdiction of the bankruptcy court, and provides that 'the period of redemption shall be extended * * * for the period necessary for the purpose of carrying out the provisions of this section.' 11 USCA (Supp. II) §203 (amendment of August 28, 1935, 49 Stat. at L. 942, chap. 792, 11 USCA §203). See *Wright* v. *Union Cent. L. Ins. Co.*, 304 U. S. 502, 513-516, 82 L. Ed. 1490, 1499-1501, 58 S. Ct. 1025, 36 Am. Bankr. Rep. (N. S.) 950."

Point II.

The Construction Placed on Section 75 (n) by the Circuit Court of Appeals Renders It Unconstitutional Because Not Within the Bankruptcy Power of Congress as Provided in Article 1, Section 8, Clause 4, and Also Because Violative of the Fifth and Tenth Amendments.

Undoubtedly Article 1, Section 8, Clause 4 of the Constitution gives broad power to Congress in the matter of bankruptcy legislation, and that under such power Congress can protect, preserve and extend existing rights and interests, even to the extent of modifying and affecting property rights established by state law. *Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555, 79 L. Ed. 1593, 55 S. Ct. 854, 97 A. L. R. 1106; *Wright* v. *Union Central Life Ins. Co.*, 304 U. S. 502, 82 L. Ed. 1490, 58 S. Ct. 1025. But it is equally true that Congress was not given the

power to create property rights or revive or re-create an interest or right which has ceased to exist prior to the time the debtor comes into the bankruptcy court, or to legislate where the debtor-creditor relationship does not exist.

As observed by Judge Major:

> "It (Congress) can administer to the patient as long as a spark of life remains, but when that spark is extinguished, its power no longer exists."

This limitation of the Bankruptcy power was recognized by this Court in *Wright* v. *Union Central Life Ins. Co.*, 304 U. S. 502, at page 514 where it was said:

> "* * * The debtor has a right of redemption of which the purchaser is advised, and until that right of redemption expires the rights of the purchaser are subject to the power of the Congress over the relationship of debtor and creditor, and its power to legislate for the rehabilitation of the debtor * * *."

The construction which the Court of Appeals places on Section 75 (n) gives the Congress unlimited power "on the subject of bankruptcies" without regard to the existence of the debtor-creditor relationship, and irrespective of the fact of the vesting of substantive rights under the state law. If the bankruptcy clause can be construed to permit the making of such fundamental changes, Congress would be in a position to subject the commercial and financial life of each state to federal regulation, and as a consequence could re-draw the lines between state and federal government. A similar contention was advanced in *Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555, 79 L. Ed. 1593, 55 S. Ct. 854, 97 A. L. R. 1106, at page 586, but it is submitted such contention is much more persuasive and cogent when applied to the facts in the case at bar.

It is also the contention of petitioner that the decision of the Court of Appeals is violative of the Fifth Amendment for the reason that it results in his property being

taken without due process of law. In reversing the District Court, the Court of Appeals necessarily held that although petitioner had become the owner of 125 acres in question, prior to the time of the filing of respondents' petition for relief, nevertheless thereafter such ownership could be divested and given to another. In other words, the decision results in the creation or re-creation of a property right in favor of respondents and at the expense of the petitioner. It is submitted that a man's property, title to which has been lawfully acquired by state law, in such manner that by such law no other person can legally assert any right, title, claim or interest therein, can not thereafter be taken from him, and given to another without the due process clause being violated.

It was this very thing that caused this Court to hold the original Section 75 (s) unconstitutional, in the *Louisville Joint Stock Land Bank* v. *Radford* case. What was said there applies with full force and effect to the case at bar, and especially the last two sentences of the opinion, where it is stated:

> "For the Fifth Amendment commands that, however great the Nation's need, private property shall not thus be taken, even for a wholly public use without just compensation. If the public interest requires, and permits, the taking of property of the individual mortgagees, in order to relieve the necessities of individual mortgagors, resort must be had to proceedings by eminent domain; so that, through taxation, the burden of the relief afforded in the public interest, may be borne by the public."

The Court of Appeals takes the position that its decision merely extended the period of redemption. But how could this be so, if the right of redemption had terminated prior to the filing of the petition for relief. An extension of time presupposes the existence of the right of equity of redemption. Of course there can be no question that Congress has the power to extend the period of redemption.

But petitioner insists that it does not have the power to create a right or equity of redemption in favor of a farmer-debtor where no such right or equity existed at the time he seeks to avail himself of the provisions of Section 75.

In *Wright* v. *Union Central Life Insurance Co.*, 304 U. S. ...., 82 L. ed. 1490, 58 S. Ct. 1025, this Court clearly recognized this constitutional limitation where, before and after pointing out the various ways in which Congress has modified and affected the property rights established by the state law, said:

> "* * * The debtor has a right of redemption of which the purchaser is advised; *and until that right of redemption expires* the rights of the purchaser are subject to the power of the Congress over the relationship of debtor and creditor and its power to legislate for the rehabilitation of the debtor. * * *"
>
> "Such action does not indicate a disregard of the property rights created by state law. The state law still establishes the norm to which Congress must substantially adhere; a serious departure from this norm, *i. e.*, from the quality of the property rights created by the state courts, has led to condemnation of the Federal action as constituting a deprivation of property without due process." (Our emphasis.)

As we stated in our brief in support of the Petition for Writ of Certiorari the decision of the Seventh Circuit Court of Appeals constitutes a serious departure from "this norm" and as a result broadens the jurisdiction of Section 75 (n) into the realm of unconstitutionality. The Court of Appeals cites the cases of *Wright* v. *Vinton Branch*, 300 U. S. 440, 470, 57 S. Ct. 556, 81 L. ed. 736, 112 A. L. R. 1455, and *Kalb* v. *Feurestein*, 308 U. S. 433, 60 S. Ct. 343, 84 L. ed. 370, in support of its assertion that its construction of Section 75 (n) is within Constitutional limitations. In the former case this Court upheld the validity of Section 75 (s) which Congress had amended in order to eliminate the objectionable features of the

original act, which had been held fatal in the Radford case. There is nothing in the opinion which would support the contention of the Court of Appeals that Congress has the power to enact legislation so as to give a court of bankruptcy jurisdiction over the property to which the debtor had no right or equity at the time of the filing of his petition for relief. In the latter case, this court at page 442 clearly recognized the proposition that the farmer-debtor must have some right or equity in the property at the time he attempts to take advantage of the act. Furthermore, as Judge Major points out in commenting on these cases, this Court was dealing with a property right which the debtor had at the time of filing his petition.

And in *Union Land Bank* v. *Byerly*, 310 U. S. 1, 7, 8, 9, 60 S. Ct. 773, 84 L. ed. 1041, this Court in considering whether the debtor had an interest in the land so as to bring it within the jurisdiction of the bankruptcy court, and in deciding adversely to the debtor, said:

> "* * * Exclusive jurisdiction of the debtor and his property vested in the District Court on the filing of the petition. Up to that time jurisdiction of the debtor and the mortgaged property was in the state court. Without action by the District Court, the state court could not have proceeded further. But without changing the status of the debtor's right of redemption, the Federal Court gave permission to the state officer to hold the sale. The sale was, however, incomplete until confirmation by the court. Until confirmed it amounted to an unaccepted offer to purchase. No sale was consummated while the bankruptcy proceeding was pending.
>
> "* * * The District Court was right in refusing to refer the reinstated cause to the Conciliation Commissioner. Since the foreclosure proceedings had been completed and the title had passed thereunder prior to the filing of the debtor's petition for reinstatement, it would have been a vain thing to refer the cause to the Conciliation Commissioner for administration of property which no longer belonged to the debtor. * * *"

In view of what we have said, as to the lack of power under the bankruptcy clause on the part of Congress to enact Section 75 (n), if it be construed as was done by the Court of Appeals in its decision in this case, we do not deem it necessary to spend much time on petitioner's contention that the decision constitutes an invasion of the powers reserved to the state by the Tenth Amendment. If the sub-section, as thus construed, was not within the bankruptcy power, as granted by Article 1, Section 8, clause 4 of the Constitution, then it would seem to follow, that the decision is in contravention of the Tenth Amendment which declares: "The powers not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the states respectively, or to the people."

We deem it sufficient to say that the decision results in a direct invasion of the powers reserved to the state by the Constitution, and a violation of the petitioner's property rights theretofore determined by the courts of the State of Indiana, in accordance with the law of that state. *Spindle v. Shreve*, 111 U. S. 542, 547, 28 L. ed. 512, 514; *Thompson* v. *Fairbanks*, 196 U. S. 516, 49 L. ed. 577, 25 S. Ct. 306; *Zartman* v. *First Nat'l Bank*, 216 U. S. 134, 54 L. ed. 418, 30 S. Ct. 368; *Bailey* v. *Baker Ice Mach. Co.*, 239 U. S. 268, 60 L. ed. 275, 36 S. Ct. 50; *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 80 L. ed. 1160, 56 S. Ct. 855.

Conclusion.

Petitioner submits that for the reasons stated herein, the judgment of the Circuit Court of Appeals for the Seventh Circuit should be reversed.

Respectfully submitted,

Telford B. Orbison,
New Albany, Indiana,
Counsel for Petitioner.

APPENDIX.

Relative Indiana Mortgage Foreclosure Statutes.

Section 3-1801, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Time of issuing execution—Sale—Notices. In any proceeding for the foreclosure of any mortgage hereafter executed on real estate, no process shall issue for the execution of any such judgment or decree of sale for a period of one (1) year after the filing of a complaint in any such proceeding. Thereafter, upon the filing of a praecipe therefor by any judgment creditor in said proceeding a copy of the judgment and decree shall be issued and certified by the clerk under the seal of the court, to the sheriff, who shall thereupon proceed to sell the mortgaged premises or so much thereof as may be necessary to satisfy the judgment, interests and costs, at public auction at the door of the court-house of the county in which said real estate is situated by advertising the same by publication once each week for three (3) successive weeks in a daily or weekly newspaper of general circulation printed in the English language and published in the county where the real estate is situated, the first of which publication shall be made at least thirty (30) days before the date of sale and by posting written or printed notices thereof in at least three (3) public places in the township in which the real estate is situated, and at the door of the court-house of the county: Provided, That if the sheriff be unable to procure the publication of such notice within such county he may dispense with such publication but he shall in his return state his inability to procure such publication and the reason therefor. (Acts 1931, ch. 90, Sec. 1, p. 257.)

Section 3-1802, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Real estate in more than one county—Jurisdiction.—When the mortgaged real estate shall lie in more than one (1) county the court of either county shall have jurisdiction of an action for the foreclosure of the mortgage thereon and all the real estate shall be advertised and sold in the county where the action is brought unless the court in its discretion shall otherwise order and direct. (Acts 1931, ch. 90, Sec. 2, p. 257.)

Section 3-1803, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Redemption before sale—Satisfaction of judgment—Redemption by part owner.—At any time prior to the sale, any owner or part owner of the real estate may redeem the same from the judgment by payment to the clerk, prior to the issuance to the sheriff of the judgment and decree or to the sheriff thereafter, of the amount of the judgment, interest and costs, for the payment or satisfaction of which the sale was ordered, in which event no process for the sale of the real estate under such judgment shall be issued or executed but the officer so receiving payment shall satisfy such judgment and the order of sale shall be vacated: Provided, That if the real estate be so redeemed by a part owner he shall have a lien on the several shares of the other owners for their respective shares of the redemption money with interest at the rate of eight (8) per cent per annum thereon and his costs of redemption, which lien shall be of the same force and effect as the judgment lien so redeemed, and enforceable by appropriate legal proceedings. (Acts 1931, ch. 90, Sec. 3, p. 257.)

Section 3-1804, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Sale of entire body of mortgaged real estate.—In selling such real estate it shall not be necessary for the sheriff to first offer the rents

and profits or separate portions or parcels of the real estate but the whole body of the mortgaged real estate together with rents, issues, income and profits thereof shall be offered and sold, unless the court in its judgment and order of sale shall have otherwise ordered and directed; and if any part of the judgment, interest and costs remains unsatisfied the sheriff shall forthwith proceed to levy the residue on the other property of the defendant. (Acts 1931, ch. 90, Sec. 4, p. 257.)

Section 3-1805, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Sheriff not to purchase—Failure of purchaser to pay—Resale—Disposal of proceeds.—No sheriff or deputy sheriff making any such sale shall directly or indirectly purchase any property so sold. If the purchaser of any property sold on such foreclosure shall fail to immediately pay the purchase-money the sheriff shall resell the property either on the same day without advertisement or on a subsequent day after again advertising the same as above provided, as the judgment creditor may thereupon direct and if the amount bid at the second sale shall not equal the amount bid at the first sale, and the costs of the second sale, the first purchaser shall be liable for the deficiency and damages thereon not exceeding ten (10) per cent and interest and costs to be recovered in the proper court by such sheriff. When property shall be sold for more than will satisfy such judgment, interest and costs, the sheriff shall pay the overplus to the clerk of the court to be disposed of as the court shall direct. Every sale made pursuant to this act shall be without relief from valuation or appraisement laws and without any right of redemption therefrom. (Acts 1931, ch. 90, Sec. 5, p. 257.)

Section 3-1806, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Sheriff's deeds—Rights conveyed.—Immediately after such sale the sheriff shall execute and deliver to the purchaser a deed of con-

veyance for the premises which shall be valid and effectual to convey all the right, title and interest held or claimed by all of the parties to said action and all persons claiming under them, and thereupon make due return to the clerk of the court. (Acts 1931, ch. 90, Sec. 6, p. 257.)

Section 3-1807, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Receiver—Rights and duties—Right of resident owner to possession—Rights of crop owner.—In all cases at any time prior to such sale, the court upon the application of the plaintiff may appoint a receiver who shall take possession of the mortgaged premises, collect the rents, issues, income and profits thereof and apply the same to the payment of all taxes, assessments, insurance premiums and repairs required in his judgment to preserve the security of the mortgage debt, and promptly file his final report thereof with the clerk of said court, and subject to the approval of said court account for and pay over to the clerk, subject to the further order of the court, any balance of such income or other avails in his possession then remaining: Provided, That if the mortgaged premises is actually occupied as a dwelling by the record owner of the fee-simple title, he shall be permitted to retain possession thereof, rent free, until such sale, so long as he continues to pay the taxes and special assessments levied against such mortgaged premises and does not suffer waste or other damage to the premises, in the judgment of the court. If the record owner of the fee-simple title does not pay the taxes and special assessments levied against the mortgaged premises, he shall be permitted to retain possession of that part of the mortgaged premises, not exceeding fifteen (15) acres, which is actually occupied as a dwelling by the record owner of the fee-simple title, rent free, until such sale, so long as he does not suffer waste or other damage to the premises in the judgment of the court; and, Provided, further, That the

owner of any crops growing on the mortgaged premises at the time of the commencement of such action, other than the owners of fee-simple title or his or her assigns, shall have the right to enter said premises and care for and harvest said crops at any time within one (1) year from the time of filing such action. (Acts 1931, ch. 90, Sec. 7, p. 257.)

Section 3-1808, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Redemption.—There shall be no redemption from foreclosures of mortgages hereafter executed on real estate except as provided for under this act. (Acts 1931, ch. 90, Sec. 8, p. 257.)

Section 3-1809, Burns Indiana Statutes, 1933:

Mortgages executed prior to June 30, 1931—Laws effective.—The laws of the state of Indiana now in force shall apply to the foreclosure of any mortgage executed prior to the taking effect of this act. (Acts 1931, ch. 90, Sec. 9, p. 257.)